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SUBJECT: KENYA ELECTORAL COMMISSION: PRESSURE'S ON, BUT
PRESSING ON

REF: A. NAIROBI 1318

[1](#)B. NAIROBI 220

Classified By: Political Counselor Larry Andre for reasons 1.4 (b,d).

[1](#)1. (C) SUMMARY: Electoral Commission of Kenya Chairman Samuel Kivuitu is confident his team will be able to successfully administer national elections later this year, but skeptical of the government's conduct and attitude toward the Commission. Kivuitu told the Ambassador during a March 22 meeting that he is facing potential electoral law reforms, and pressure from members of the government. He also expressed his conviction that when his term of appointment, and that of 12 other Commissioners, expire before the election, they will not be extended. Nonetheless, buoyed by a strong showing at his national elections conference, Kivuitu is pressing on to deliver a credible election. END SUMMARY.

[1](#)2. (C) Electoral Commission of Kenya (ECK) Chairman Samuel Kivuitu shared with the Ambassador on March 22 his views on the state of preparations ahead of December's general election. Kivuitu remained optimistic about the integrity and capability of the ECK. Kivuitu told the Ambassador the ECK has a good team of capable staff who will perform even though short on resources and time. He was concerned, however, about some government officials who continue to try to undermine the ECK's independence, including through the appointment of "pet" commissioners (ref B).

ELECTORAL REFORM

[1](#)3. (C) Kivuitu was concerned that his focus was becoming clouded by possible legislative changes to the electoral process. Although the Commission will be able to adapt, it will need sufficient time to implement changes. On the proposal to cut the number of ECK commissioners to nine (from the current 22), Kivuitu reiterated his concern that there must be a complementary increase in support staff around the country. Kivuitu commented that he would like to see reforms which empower the Commission, increasing its capacity to handle disputes and misconduct, and make binding determinations. Kivuitu also supported proposed reforms which would improve the capacity of political parties (the Political Parties Bill) and move the registration of parties out of the hands of "corrupt people from the Attorney General's office" into the ECK.

[1](#)4. (C) Although Kibaki did not mention it during his speech opening Parliament on March 20 (ref B), Kivuitu himself has

recommended 60 new constituencies (based on a constitutionally mandated review every 10 years which was due

in 2006). Already underway is the process of creating 62 new districts, which will, in 15 instances, cut across constituency borders, Kivuitu noted. In an earlier conversation with USAID's Democracy and Governance Officer, Kivuitu noted that voters cut off from their original constituency will have to travel to their old constituency to vote, if re-registration is not possible. Kivuitu told the Ambassador that he hopes to do another registration drive, but the voter list must be closed by the end of July for December polling.

SKEPTICAL ABOUT THE GOVERNMENT

15. (C) Kivuitu was concerned about the government's campaign conduct and attitude towards the ECK. He reiterated to the Ambassador his disappointment at documented abuses during the July 2006 by-elections. Kivuitu during his March 13 speech opening the ECK's national conference on the 2007 election, as urged by Nairobi-based heads of mission, publicly condemned the misconduct. "State authority and taxpayers' resources were used for the sole purpose of political victories," he stated in his remarks. The government's response has been to abuse him, accusing him of being "pro-opposition," he told the Ambassador. There are ministers who have let Kenya down, Kivuitu commented. Michuki (Internal Security) and Martha Karua (Justice and Constitutional Affairs), for example, insist on asserting their authority over the ECK. Others, such as Defense Minister Njenga Karume, are just as frustrated as Kivuitu with the administration. Repeating an observation often heard about the Kibaki government, Kivuitu noted that the president himself is very democratic, but is dictated to by his ministers.

DIVISIONS IN THE ECK

16. (C) With nine controversial new appointments in January (Kibaki acted unilaterally, critics argued, without consulting the opposition in naming pro-government Commissioners), a rift has emerged among the 22 commissioners. Kivuitu explained that the old members suspect the new appointees have been brought on board to replace them. "We all know," Kivuitu commented, that when our terms (those of the 13 older commissioners) expire, "we'll be gone," despite the President's assurances that their tenures would be extended. Kivuitu expected that Muturi Kigano, "who thinks he can run an election" (and was formerly Kibaki's lawyer), will be named Chairman. The Chairman added that Kigano is an ex-convict, having served time for stealing from clients. Overall, Kivuitu was worried that the full team of Commissioners is unable to work together, expressing frustration that some new members were undermining him.

OTHER CHALLENGES

17. (C) Kivuitu lamented persistent tribalism in the country, commenting that "the government has not helped (the situation) with its appointments." If the opposition (ODM-K) can remain united, it will have a positive effect on ethnicity, the Chairman observed. While he felt the current voter registration drive (through March) was going well, the issuance of national identity cards, necessary for voter registration, was still an obstacle. (NOTE: Issuance of national identity cards is a function of the Registrar under the Attorney General, while the issuance of voters' cards is handled by the ECK. END NOTE.) Kivuitu emphasized the importance of the U.S. voice during the electoral process. When the Mission speaks out, people take notice, he added. (NOTE: See septel for the Mission's election strategy, including public diplomacy themes and advocacy goals. END NOTE.)

KIVUITU IN WASHINGTON

18. (SBU) Chairman Kivuitu will be in Washington to meet with Department and USAID officials on March 30. The Ambassador informed Kivuitu that there will be great interest in the Chairman's candid view of preparations for the election, as well as of his prime concerns and challenges. It may be useful for Washington to reinforce the Mission's support for Kivuitu and for the ECK's independence. Along with other like-minded donors, the Mission advocates that the ECK should be unhindered in fulfilling its mandate, including enforcing the Electoral Code of Conduct, pursuing evidence of misconduct, and taking a strong position against violations.

COMMENT

19. (C) It is Kivuitu and a few of his deputies who give Kenyans, and outside observers, confidence in Kenya's electoral process. Kivuitu's departure from the Commission before the national election (his term expires in early December) would raise credibility concerns. To his credit, Kivuitu is proceeding as if the politics surrounding his commission and the elections is just background noise. He emerged from the ECK's March 13-15 conference stronger; strength he will need over the next nine months. END COMMENT.
RANNEBERGER